

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICIA CHRISTINE SANDERS,

Defendant-Appellant.

UNPUBLISHED

April 28, 2009

No. 277670

Wayne Circuit Court

LC No. 06-012754

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of embezzlement over \$20,000, MCL 750.174(5)(a). She was sentenced to three years' probation. Defendant appeals as of right, challenging the sufficiency of the evidence. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

After defendant's imprisoned brother, Nicholas, revoked a power of attorney that he had given to defendant, Nicholas and defendant, as well as other siblings, became entitled to proceeds from the settlement of a lawsuit filed on behalf of their deceased father. Despite the revocation,¹ defendant represented to the attorney for the estate that she had a power of attorney from Nicholas. The attorney issued a check covering Nicholas's share of the settlement proceeds, making it payable jointly to defendant and another brother, Tony. Nicholas owed Tony \$7,000,² and after the settlement check was cut, defendant and Tony went to Tony's credit union to cash the check. The check was cashed, Tony took the \$7,000 owed to him by Nicholas, and a cashier's check for the remaining amount, \$54,143, was given to defendant. Tony later discussed with defendant the \$54,143 after Nicholas was freed from prison and demanded his money. Defendant told Tony that the funds were in stocks and bonds and that it would take a month or so to liquidate the securities. Defendant, however, ultimately used the money intended for Nicholas for her own personal gain.

¹ At trial, an undated letter was admitted during Nicholas's testimony which indicated that defendant acknowledged the revocation; Nicholas could not give a specific date with respect to receipt of the letter.

² Tony had paid \$7,000 toward an attorney to handle Nicholas's criminal case.

Defendant argues that the evidence was insufficient to convict her of embezzlement by an agent because Nicholas had terminated the agency when he revoked the power of attorney.³ Defendant contends that the evidence was insufficient to show that the money came into her possession by virtue of her being an agent because she was no longer an agent when she received and converted the money.

MCL 750.174, the embezzlement statute, is fairly broad, and it provides in pertinent part as follows:

(1) A person who as the agent, servant, or employee of another person, governmental entity within this state, or other legal entity *or who as the trustee, bailee, or custodian of the property of another person*, governmental entity within this state, or other legal entity fraudulently disposes of or converts to his or her own use, or takes or secretes with the intent to convert to his or her own use without the consent of his or her principal, any money or other personal property of his or her principal that has come to that person's possession or that is under his or her charge or control by virtue of his or her being an agent, servant, employee, trustee, bailee, or custodian, is guilty of embezzlement. [Emphasis added.]

The felony information provided, in part, that defendant “did, being an agent, servant, or employee of Nicholas Sanders *and/or* being trustee, bailee, or custodian of the property of Nicholas Sanders, take or secrete with intent to convert to his/her own use, without the consent of his/her principal, money, or personal property of his/her principal, having a value of \$20,000.00 or more, that came into the defendant’s possession or under the defendant’s charge or control by virtue of his/her relationship with the principal.” (Emphasis added.) The information indicated that the prosecution’s case was being pursued either with defendant being an agent of Nicholas *and/or* with defendant being a trustee, bailee, or custodian of Nicholas’s property. At the time that defendant obtained the settlement check and when she converted Nicholas’s share of the settlement proceeds to her own use, she was not Nicholas’s agent due to the revocation.⁴ But, alternatively, she was acting as a bailee or custodian of property belonging to another, and she converted the property to her own use. A “custodian” is “[a] person . . . that has charge or custody of property,” and a “bailee” is “[a] person who receives personal property from another as a bailment.” Black’s Law Dictionary (7th ed). A “bailment” arises when there is “[a]

³ Defendant’s argument below was the opposite of that being asserted now on appeal. At trial, defendant maintained that the prosecution failed to prove beyond a reasonable doubt that she actually received the revocation. Therefore, she was proceeding honestly when being issued the check, and her later actions entailed civil law questions, not criminal law, concerning whether she was properly acting within the scope of her authority as an agent.

⁴ A power of attorney is to be interpreted according to principles governing the law of agency. *Vanderwall v Midkiff*, 166 Mich App 668, 677; 421 NW2d 263 (1988). An “agent” is “[o]ne who is authorized to act for or in place of another; a representative.” Black’s Law Dictionary (7th ed).

delivery of personal property by one person (the *bailor*) to another (the *bailee*) who holds the property for a certain purpose under an express or implied-in-fact contract.” *Id.*⁵

For purposes of the bailment or custodianship theory, MCL 750.174(1) also requires that the money belong to defendant’s “principal” and that it come into defendant’s possession “by virtue of . . . her being a[] . . . trustee, bailee, or custodian.” The felony information did not expressly state that Nicholas was the “principal,” nor did it replace the term “principal” from the statutory language with Nicholas’s name. It would be reasonable to consider Nicholas as the “principal” in relation to the information’s charge that defendant was Nicholas’s agent; however, this is not necessarily true relative to the alternative charge that defendant was acting as a bailee or custodian of property belonging to another. The deceased father’s estate could reasonably be coined the “principal,” either as a bailor or an entity creating a custodianship, which gave the check intended for Nicholas to defendant as custodian or bailee, but which defendant converted to her own use. In other words, the money was being held by the estate through its attorney; the estate gave the money to defendant for a certain purpose, i.e., for her to pass it on to Nicholas (making her a bailee or custodian); and, defendant, instead of giving the money to Nicholas, converted it to her own use.⁶ Viewing the evidence in a light most favorable to the prosecution, it was sufficient to support a bailee or custodian theory of criminal liability. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). We thus affirm the conviction.

Affirmed.

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Michael J. Kelly

⁵ While bailments typically do not involve money, *Goldman v Phantom Freight, Inc*, 162 Mich App 472, 480; 413 NW2d 433 (1987), MCL 750.174(1) expressly references “money or other personal property.”

⁶ The trial court’s ruling indicated that it did not find relevant the revocation or the issue of whether the revocation was acknowledged. At its core, the court’s ruling of guilt was premised on the basic theory that the money belonged to Nicholas, defendant had it in her care, custody, and control, and she used the money for herself, instead of giving it to Nicholas.